DEPARTMENT OF JUSTICE
Antitrust Division

THOMAS O. BARNETT
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

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Michael Katchmark, Esq.
Willcox & Savage
One Commercial Place
Suite 1800
Norfolk, VA 23510

Dear Mr. Katchmark:

This letter responds to your request on behalf of the Southeastern Public Service Authority ("SPSA") for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You requested a statement of the Department's antitrust enforcement intentions with respect to a proposed one year contract between SPSA and John C. Holland Enterprises, Inc. ("Holland"), for the disposal of construction and demolition debris ("CDD") waste by Holland at SPSA's landfill located in Suffolk, Virginia.

Based on your representations and the information you provided, we understand SPSA to be a public body established pursuant to the laws of the Commonwealth of Virginia for the purpose of providing public services, including waste disposal services, in the Norfolk, Virginia area. SPSA is an authority which provides services to the cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach and the counties of Isle of Wight and Southampton. Holland owns and operates a competing landfill that is located about eight miles from SPSA's landfill in Suffolk. According to your representations, the proposed contract has a one-year term; can be terminated prior to the expiration date by either party with thirty days' notice; commits SPSA to accepting threshold volumes of CDD waste from Holland at the disposal contract rate set by SPSA; and commits Holland to supplying the threshold volumes of CDD waste at the contract rate.

You represent that the proposed contract is based on terms SPSA offers to any waste hauler who commits to providing SPSA with a minimum quantity of CDD. You represent that the contract disposal rate and volume requirements are set and adjusted annually by SPSA's board, based on its budget requirements for the next year, and are not negotiated between the contracting parties or any other CDD hauler. In addition, the contract disposal rate and volumes are publicly announced and published on SPSA's website.

In your request, you contend that the proposed contract will result in additional throughput at SPSA's landfill, which will reduce average operating costs and, in turn, increase profits. You have also stated that these additional profits will help SPSA keep disposal costs down for its member municipalities and counties.

Based on the representations made in your request and on the information obtained during our own review, the Department has no present intention to challenge SPSA's conduct pursuant to the proposed contract between SPSA and Holland. Although contracts between competitors can raise antitrust concerns, the proposed one-year contract does not appear likely to have anticompetitive effects. Because the maximum volume under the proposed contract is a relatively insignificant portion of SPSA's waste disposal capacity, and the contract is for such a short duration, the contract likely will not materially reduce either party's incentive or ability to compete for waste disposal. In particular, the contract does not affect either party's independent control of assets necessary to compete, or give either party a financial interest in the waste disposal services provided by the other. The proposed contract also is not likely to facilitate explicit or tacit collusion, since it does not entail or facilitate the exchange of any significant competitively sensitive information that is not otherwise publicly available, or link either party's pricing or output to conduct of the other party.

This letter expresses the Department's current enforcement intention and is issued in reliance on the information and representations contained in SPSA's submissions. In accordance with our normal practices, the Department reserves the right to bring any enforcement action or proceeding we subsequently come to believe is required by the public interest, if the proposed contract or any other transaction between SPSA and Holland proves to be anticompetitive in purpose or effect.[1]

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty (30) days of the date of that letter, unless you request that part of the material be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

Thomas O. Barnett

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[1]You state in your letter that SPSA understands that it may be immune from antitrust liability under the state action doctrine, but that SPSA solicits the Division's views regardless of its possible immunity. In responding to SPSA's request, the Division expresses no view as to whether or not SPSA is entitled to antitrust immunity, under the state action doctrine or otherwise.